

Honorable Barbara J. Rothstein

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

HYDROBEE, SPC., a Washington
corporation,

Plaintiff,

v.

CITY OF SEATTLE,

Defendant.

No. 2:20-cv-01332-BJR

**STIPULATION AND
PROTECTIVE ORDER**

Plaintiff, through its counsel, and City of Seattle hereby stipulate and agree to the entry of the following Protective Order regarding the Confidential Information more particularly described below.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Discovery requested in this matter includes materials that may qualify for protection under Fed. R. Civ. P. 26(c). Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled

1 to confidential treatment under the applicable legal principles, and it does not presumptively
2 entitle parties to file confidential information under seal.

3 2. “CONFIDENTIAL” MATERIAL

4 “Confidential” material may include but is not limited to the following documents and
5 tangible things designated by one or more parties to be produced or otherwise exchanged:

6 Plaintiff’s documents: Plaintiff’s financial records, business plans, tax information, bank
7 statements, contracts, correspondence re: products and product development, competitor
8 information, product plans. By setting forth these designations, neither party is agreeing such
9 documents are in fact confidential nor waiving any right to challenge such designations.

10 City of Seattle documents: (1) City of Seattle employee personnel files; (2) un-sustained
11 City of Seattle employee internal investigations and disciplinary files; (3) un-sustained complaints
12 of City of Seattle employee misconduct; (4) City of Seattle employee medical, psychological, and
13 financial records; (5) records that could implicate the privacy rights of the plaintiff or third parties,
14 including, but not limited to, personal identifying information (“PII”) such as date(s) of birth,
15 social security number(s), personal home address(es), phone number(s), and e-mail address(es),
16 driver’s license or state identification number(s), personal financial information, passport
17 information, immigration status, criminal history and/or criminal record number(s), and other
unspecified PII.

18 3. SCOPE

19 The protections conferred by this agreement cover not only confidential material, but
20 also (1) any information copied or extracted from confidential material; (2) all copies, excerpts,
21 summaries, or compilations of confidential material; and (3) any testimony, conversations, or
22 presentations by parties or their counsel that might reveal confidential material. However, the
23 protections conferred by this agreement do not cover information that is in the public domain or becomes
24 part of the public domain through trial or otherwise.

1
2 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

3 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
4 or produced by another party or by a non-party in connection with this case for only prosecuting,
5 defending, or attempting to settle litigation for any client they represent arising from this litigation.
6 Confidential material may be disclosed only to the categories of persons and under the conditions
7 described in this agreement. Confidential material must be stored and maintained by a receiving
8 party at a location and in a secure manner that ensures that access is limited to the persons
9 authorized under this agreement.

10 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
11 by the court or permitted in writing by the designating party, a receiving party may disclose any
12 confidential material only to:

13 (a) the receiving party’s counsel of record in this action, as well as employees of
14 counsel to whom it is reasonably necessary to disclose the information for use in this case;

15 (b) the officers, directors, and employees (including in house counsel) of the receiving
16 party to whom disclosure is reasonably necessary for this litigation, unless the parties agree that
17 a particular document or material produced is for Attorney’s Eyes Only and is so designated;

18 (c) experts and consultants to whom disclosure is reasonably necessary for this
19 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (d) the court, court personnel, and court reporters and their staff;

21 (e) copy or imaging services retained by counsel to assist in the duplication of
22 confidential material, provided that counsel for the party retaining the copy or imaging service
23 instructs the service not to disclose any confidential material to third parties and to immediately
24 return all originals and copies of any confidential material;

25 (f) during their depositions or court proceedings, witnesses in the action to whom
disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to

Be Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Public Release or Filing Confidential Material. Before filing confidential material or discussing or referencing the content of such material in court filings, the filing party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court’s files.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the

1 material, documents, items, or communications for which protection is not warranted are not
 2 swept unjustifiably within the ambit of this agreement.

3 If it comes to a designating party's attention that information or items that it designated
 4 for protection do not qualify for protection, the designating party must promptly notify all other
 5 parties that it is withdrawing the mistaken designation.

6 5.2 Manner and Timing of Designations. Except as otherwise provided in this
 7 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
 8 ordered, disclosure or discovery material that qualifies for protection under this agreement must
 9 be clearly so designated before or when the material is disclosed or produced.

10 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
 11 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
 12 the designating party must affix the word "CONFIDENTIAL" to each page that contains
 13 confidential material. If only a portion or portions of the material on a page qualifies for
 14 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by making
 15 appropriate markings in the margins).

16 (b) Testimony given in deposition or in other pretrial proceedings: the parties and any
 17 participating non-parties must identify on the record, during the deposition or other pretrial
 18 proceeding, all protected testimony, without prejudice to their right to so designate other
 19 testimony after reviewing the transcript. Any party or non-party may, within thirty days after
 20 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
 21 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential
 22 information at trial, the issue should be addressed during the pre-trial conference.

23 (c) Other tangible items: the producing party must affix in a prominent place on the
 24 exterior of the container or containers in which the information or item is stored the word
 25 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
 the producing party, to the extent practicable, shall identify the protected portion(s).

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 2 designate qualified information or items does not, standing alone, waive the designating party's
 3 right to secure protection under this agreement for such material. Upon timely correction of a
 4 designation, the receiving party must make reasonable efforts to ensure that the material is treated
 5 in accordance with the provisions of this agreement.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
 8 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
 9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 10 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
 11 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 12 original designation is disclosed.

13 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
 14 regarding confidential designations without court involvement. Any motion regarding
 15 confidential designations or for a protective order must include a certification, in the motion or in
 16 a declaration or affidavit, that the movant has engaged in a good faith meet and confer with other
 17 affected parties in an effort to resolve the dispute without court action. The certification must list
 18 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
 to-face meeting or a telephone conference.

19 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
 20 intervention, either party may file and serve a motion to challenge or retain confidentiality under
 21 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
 22 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
 23 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
 24 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
 25 the material in question as confidential until the court rules on the challenge.

1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
2 LITIGATION

3 If a party is served with a subpoena or a court order issued in other litigation that compels
4 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party
5 must:

6 (a) promptly notify the designating party in writing and include a copy of the subpoena
7 or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to issue in
9 the other litigation that some or all of the material covered by the subpoena or order is subject to
10 this agreement. Such notification shall include a copy of this agreement; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
12 designating party whose confidential material may be affected.

13 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

14 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
15 material to any person or in any circumstance not authorized under this agreement, the receiving
16 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
17 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
18 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
19 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be
20 Bound” that is attached hereto as Exhibit A.

21 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
22 MATERIAL

23 When a producing party gives notice to receiving parties that certain inadvertently
24 produced material is subject to a claim of privilege or other protection, the obligations of the
25 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
is not intended to modify whatever procedure may be established in an e-discovery order or

1 agreement that provides for production without prior privilege review. The parties agree to the
2 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

3 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

4 Within 90 days after the termination of this action, including all appeals, each receiving
5 party must return all confidential material to the producing party, including all copies, extracts
6 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
7 destruction.

8 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
9 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
10 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
11 work product, even if such materials contain confidential material. All such material shall remain
12 subject to the confidentiality obligations imposed by this agreement after the termination of this
13 litigation.

14 The confidentiality obligations imposed by this agreement shall remain in effect until a
15 designating party agrees otherwise in writing or a court orders otherwise.

16 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

17 **DATED this 21st day of December, 2020.**

SEATTLE CITY ATTORNEY'S OFFICE

RUIZ & SMART PLAINTIFF LITIGATION

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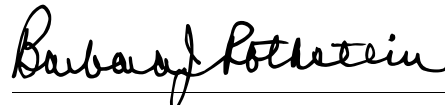
Attorneys for Plaintiff

Attorneys for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED this 30th day of December, 2020.



Barbara Jacobs Rothstein

U.S. District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____[print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on [date] in the
case of _____ **[insert formal name of the case and the number and initials
assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
not disclose in any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____